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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,406	03/17/2004	Thomas Weisel	SUS1.PAU.02	5563

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EXAMINER

BAXTER, JESSICA R

ART UNIT	PAPER NUMBER
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3733

DATE MAILED: 02/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/803,406	Applicant(s) WEISEL ET AL.	
	Examiner Jessica R. Baxter	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 8,9,11,12 and 25-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7,10,13,14,16,17 and 22-24 is/are rejected.
- 7) ☒ Claim(s) 15 and 18-21 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Election/Restrictions

1. Claims 8,9,11,12, and 25-27 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11 October 2005.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-4, 6, 7, 10, 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,618,290 to Toy et al.

Toy discloses a surgical device extending along an axis and having a proximal end and a distal end, the device being operable to move a suture through body tissue, comprising: an elongate shaft having a hollow configuration (11); a handle assembly (17) coupled to the shaft; an actuating rod (3) having a proximal end and a distal end, the actuating rod being disposed to extend between the handle assembly and the shaft; a needle (6) assembly disposed at the distal end of the actuating rod and movable with the actuating rod between an extended state and a retracted state (FIG. 5 and 4); bifurcated portions of the needle assembly defining a suture slot (7), the bifurcated portions having a proximate

relationship when the needle assembly is in the retracted state (FIG. 5) and having a separated relationship when the actuating rod is in the extended state (FIG. 4); the needle assembly being biased to the retracted state; and the bifurcated portions being biased to the separated relationship; further comprising: a sharp needle included in the needle assembly and disposed distally of the bifurcated portions; wherein the bifurcated portions include a backing arm and a gathering arm that define the suture slot with a proximal end and a distal end; wherein portions of the gathering arm define a passage into the suture slot; wherein the portions of the gathering arm are disposed closer to the distal end of the suture slot than the proximal end of the suture slot (FIG. 4).

4. Claims 1, 2, 13, 14, 16, 17 and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,723,107 to Skiba et al.

Skiba discloses a surgical suturing device, including: a needle assembly having a needle movable in a needle housing between a free suture state and a captured suture state (FIG. 20 and 21); a handle assembly including a longitudinal handle housing sized and configured to releasably receive the needle assembly (1802); a thumb slide (1804) assembly releasably coupled to the needle and movable longitudinally on the handle housing between a distal position and a proximal position; the distal position of the thumb slide assembly being associated with the needle in the free suture state; and the proximal position of the thumb slide assembly being associated with the needle in the captured suture state; wherein: the needle is movable in the needle housing between a free suture state, a captured suture state, and a locked suture state (FIG. 20 and 21); the proximal position of the thumb slide assembly is associated with the needle in the locked suture state; further comprising: a needle

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lock included in the thumb slide assembly and having a releasable locking relationship with the needle (Column 4, line 44-Column 5 line 20).

5. Claims 1-4, 6 and 7 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent no. 6,936,054 to Chu.

Chu discloses a surgical device extending along an axis and having a proximal end and a distal end, the device being operable to move a suture through body tissue, comprising: an elongate shaft having a hollow configuration (104); a handle assembly coupled to the shaft (102); an actuating rod (110) having a proximal end and a distal end, the actuating rod being disposed to extend between the handle assembly and the shaft; a needle assembly disposed at the distal end of the actuating rod (124) and movable with the actuating rod between an extended state and a retracted state (FIGS. 2A and 2D); bifurcated portions of the needle assembly defining a suture slot (126), the bifurcated portions having a proximate relationship when the needle assembly is in the retracted state and having a separated relationship when the actuating rod is in the extended state (FIG. 2B); the needle assembly being biased to the retracted state; and the bifurcated portions being biased to the separated relationship.

6. Claims 13, 14, 22-24 are rejected under 35 U.S.C. 102(e) as being anticipated by PG-PUB 2002/0147456 to Diduch et al.

Diduch discloses a method for placing suture across a body wall of a patient, comprising the steps of: providing a suture device including a hollow shaft (20) with a proximal end and a distal end, an actuating rod disposed in the shaft (2), and a needle assembly (10) carried by the rod between a deployed position (FIG. 2b) and a retracted position (FIG. 2a); providing the needle assembly with a needle having a sharp distal tip;

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bifurcating the needle to form at least one pair of arms defining a suture slot (6), the arms being movable between a proximate position associated with a first slot size (FIG. 2a) and a spaced position associated with a second slot size greater than the first slot size; (FIG. 2b) penetrating the body wall with a needle assembly in the retracted position and the arms in the proximate position; and advancing the needle assembly to the deployed position to move the arms to the spaced position associated with the second slot size; forming a channel in one of the arms to provide for side-loading of the suture into the suture slot; wherein the slot has a proximal end and a distal end and the forming step includes the step of forming the channel in proximity to the distal end of the slot (Paragraphs 0054-0058).

Allowable Subject Matter

7. Claims 15 and 18-21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica R. Baxter whose telephone number is 571-272-4691. The examiner can normally be reached on M-F 8:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jessica R Baxter
Examiner
Art Unit 3733



jrb